

FLORIDA PUBLIC SERVICE COMMISSION  
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M E M O R A N D U M

DECEMBER 26, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (JOHNSON) *of RVE*  
DIVISION OF ELECTRIC AND GAS (BASS) *ALT*

RE: DOCKET NO. 930885-EU - PETITION TO RESOLVE TERRITORIAL  
DISPUTE WITH GULF COAST ELECTRIC COOPERATIVE, INC. BY  
GULF POWER COMPANY

AGENDA: JANUARY 7, 1997 - REGULAR AGENDA - DECISION PRIOR TO  
HEARING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\ [REDACTED]

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CASE BACKGROUND

By Order No. PSC-95-0271-FOF-EU, the Florida Public Service Commission resolved a territorial dispute between Gulf Power Company (Gulf or Gulf Power) and Gulf Coast Electric Cooperative (Gulf Coast) concerning which utility should provide electric service to the Washington County Correctional Facility. The order also directed the parties to negotiate in good faith to reach a territorial agreement as to all the areas of potential dispute in south Washington and Bay counties. Because the parties have been unable to agree on a boundary, this matter is scheduled for an evidentiary hearing on February 11-12, 1997 so that the Commission may determine the appropriate boundary for the utilities.

Staff met with the parties in an attempt to clarify the scope of the issues to be addressed at the hearing. An agreement was not reached. A preliminary prehearing conference was held on July 29, 1996, so that the prehearing officer could consider simplification of the issues to facilitate discovery and the filing of testimony.

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Following the preliminary prehearing conference, Order Determining Issues to Be Resolved at Evidentiary Hearing, Order No. PSC-96-1191-PCO-EU, was issued on September 23, 1996, wherein the prehearing officer approved the following issues:

1. What are the areas of South Washington and Bay Counties where the electric facilities of Gulf Power and Gulf Coast are commingled and in close proximity?
2. What are the areas in South Washington and Bay Counties where further uneconomic duplication of electric facilities is likely to occur?
3. What is the expected customer load, energy, and population growth in the areas identified in response to issues 1 and 2 above?
4. What is the location, type and capacity of each utility's facilities in the areas identified in response to issues 1 and 2 above?
5. Is each utility capable providing adequate and reliable electric service to the areas identified in response to issues 1 and 2 above?
6. How should the Commission establish the territorial boundary between Gulf Power and Gulf Coast in South Washington and Bay Counties where the electric facilities are commingled and in close proximity and further uneconomic duplication of facilities is likely to occur?
7. Where should the territorial boundary be established?

The prehearing officer also determined that the revised and additional issues suggested by Gulf Power, as listed below, were inappropriate for consideration in this docket.

#### Revision

Issue 6: Should the Commission establish a territorial boundary between Gulf Power and Gulf Coast in South Washington and Bay Counties where the electric facilities are commingled and in close proximity and further uneconomic duplication of facilities is likely to occur? If so, how and where should the boundary be established?

Additional Issues

1. What is the meaning of the statutory directive that the Commission ". . . prevent the further uneconomic duplication . . ." of generation, transmission and distribution facilities?
2. Is the Commission's present system for resolving territorial disputes adequate to resolve any future disputes that may arise between Gulf Coast Electric Cooperative and Gulf Power Company?
3. Can the Commission effectively prevent the uneconomic duplication of electric facilities by these two utilities through a mechanism that does not include drawing "lines on the ground"?
4. Are "lines on the ground" in the best interest of the customers of the two utilities?
5. Should the Commission seek a resolution of this matter through mechanisms other than drawing "lines on the ground"?
6. Rather than attempting to draw "lines on the ground" between the two utilities, would consumers be better served if the Commission directed each utility to follow Commission imposed guidelines for line extension to new customers, based on the Commission's "lowest cost to the utility" policy historically used in resolving territorial disputes?
7. Should the guidelines established by the Commission for line extensions to new customers include consideration of the cost of generation to serve loads in question in addition to the cost of distribution and/or transmission line extensions in determining which utility has the lowest cost to serve?

Thereafter, on September 30, 1996, Gulf Power filed a Motion for Clarification of Order No. PSC-96-1191-PCO-EU seeking clarification as to whether the seven approved issues are a final statement of the issues to be addressed. Gulf Power also requested clarification of whether it will be allowed to present alternatives to drawing territorial boundary lines in its position on the issues. Further, Gulf Power sought leave to raise any objections it may have if the issues were, in fact, intended to be limited to the seven set forth in Order No. PSC-96-1191-PCO-EU.

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By Order No. 96-1331-PCO-EU (Order Clarifying Order No. PSC-96-1191-PCO-EU), issued on November 4, 1996, the prehearing officer ruled that the seven issues approved are sufficient to ensure that all matters of concern in establishing territorial boundaries are adequately addressed. In addition, the prehearing officer stated that Gulf Power could raise at the prehearing conference, issues which had not been previously considered.

On November 14, 1996, Gulf Power filed a Motion for Reconsideration of Order No. PSC-96-1191-PCO-EU, as clarified by Order No. PSC-96-1331-PCO-EU. The Motion for Reconsideration is limited to reconsideration of matters clarified by Order No. PSC-96-1331-PCO-EU. Gulf seeks an order approving its issues, or in the alternative, an order acknowledging that any resolution of the final issues will be made at the prehearing conference.

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**ISSUE 1:** Should the Commission grant Gulf Power's Motion for Reconsideration?

**RECOMMENDATION:** No. Gulf has not shown that the prehearing officer failed to follow the law, or overlooked a relevant fact.

**STAFF ANALYSIS:** Pursuant to Rule 25-22.0376, Florida Administrative Code, any party who is adversely affected by an order of a prehearing officer may seek reconsideration by the Commission panel assigned to the proceeding by filing a motion in support thereof within 10 days after the issuance of the order. The purpose of a motion for reconsideration is to bring to the Commission's attention some material and relevant point of fact that it overlooked or failed to consider when the order was issued, a mistake of law or fact, or abuse of discretion. Diamond Cab Co. v. King, 146 So.2d 889, 891 (Fla. 1962). Reconsideration is not intended as a procedure for re-arguing a case merely because the losing party disagrees with the judgment or the order. Id. This standard also applies to reconsideration by the Commission of a prehearing officer's order. See Order No. PSC-96-0133-FOF-EI, issued in Docket No. 950110-EI, on January 29, 1996 (denying motion for reconsideration of prehearing officer's order denying motion to continue).

Gulf's Motion for Reconsideration simply reiterates the same arguments which the Company advanced at the preliminary prehearing conference, and in its motion for clarification. The prehearing officer has considered and addressed these arguments in her orders. Gulf's motion does not set forth any reasons why the prehearing officer's orders should be overturned.

Gulf argues that Commission policy has been to allow issue development until the prehearing conference. The prehearing officer determined that the issues proposed by Gulf Power at the preliminary prehearing conference are not appropriate, however, she has not denied parties the opportunity to develop additional issues. She ruled that Gulf "may not reintroduce the suggested revised and additional issues, nor any substantively similar issue." The clarifying order, however, also states that "to the extent that Gulf, or any other party, determines that there are issues that were not previously considered at the preliminary prehearing conference, such issues may be presented for consideration and approval by the prehearing officer at the prehearing conference." Staff notes that the Commission's rules do not prohibit the prehearing officer from determining whether

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certain issues are inappropriate prior to the prehearing conference.

Gulf Power also argues that the approved issues greatly limit what the Commission may consider, while the addition of its issues would permit the Commission to receive evidence on various options that the Commission could employ to resolve this matter. According to Gulf, consideration of these options is necessary because the current proceeding is "novel" in that the Commission heretofore, has never established a territorial boundary where the parties to the dispute have been unable to do so.

The prehearing officer has not limited Gulf's ability to offer evidence on the options the Commission may consider in resolving the dispute. Order No. PSC-96-1191-PCO-EU states that "if Gulf would like to offer creative solutions to the territorial dispute, other than establishing a territorial boundary line, it may do so in its positions on the issues."

Gulf's motion for reconsideration is simply an attempt to re-argue issues which the prehearing officer has already considered and determined are inappropriate. Gulf disagrees with the prehearing officer's judgment, however, disagreement is not a basis for reconsideration. Gulf has not shown that the prehearing officer failed to follow the law, or overlooked some relevant fact, therefore, Gulf's motion for reconsideration should be denied.

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**ISSUE 2:** Should this Docket be closed?

**RECOMMENDATION:** No, the docket should remain open.

**STAFF ANALYSIS:** The Docket should remain open pending final resolution of the remaining issues in the case. An evidentiary hearing is scheduled for February 11-12, 1997 to resolve the continuing dispute between the utilities.